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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91188704
Party	Defendant DHC Assets Limited Partnership
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Date	03/14/2009
Attachments	Microsoft Word - Garage Brand answer.pdf ( 5 pages )(31379 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

<b>In the Matter of Application</b>	)	
<b>Serial No. 77/465,234</b>	)	
	)	<b>Opposition No. 91188704</b>
<b>Mark: GARAGE BRAND</b>	)	
	)	
<b>Published in the Official Gazette</b>	)	<b>Serial No. 77/465,234</b>
<b>On October 7, 2008</b>	)	
	)	
<b>iLike, Inc.,</b>	)	
<b><i>Opposer,</i></b>	)	
	)	
<b>v.</b>	)	
	)	
<b>DHC Assets Limited Partnership,</b>	)	
	)	
<b><i>Applicant/Respondent.</i></b>		

**ANSWER TO NOTICE OF OPPOSITION WITH AFFIRMATIVE DEFENSES**

Dear Commissioner,

Applicant, DHC Assets Limited Partnership (hereinafter “Applicant” or “DHC”) hereby submits an Answer to the Notice of Opposition filed by iLike, Inc., (hereinafter “Opposer” or “iLike”).

1. Applicant is without knowledge or information as to Opposer’s belief that it will be injured by Applicant’s registration on the Principal Register. Applicant denies that registration and use of the proposed mark “GARAGE BRAND” will confuse consumers as to source of origin.

2. Applicant denies knowledge or information sufficient to form a belief as to the truth of the facts set forth in paragraph 1 of the opposition.

3. Applicant denies knowledge or information sufficient to form a belief as to the truth of the facts set forth in paragraph 2 of the opposition.

4. Applicant denies knowledge or information sufficient to form a belief as to the truth of the facts set forth in paragraph 3 of the opposition.

5. Applicant denies knowledge or information sufficient to form a belief as to the truth of the facts set forth in paragraphs 4(a) – (e) of the opposition.

6. Applicant denies knowledge or information sufficient to form a belief as to the truth of the facts set forth in paragraph 5 of the opposition.

7. Applicant denies knowledge or information sufficient to form a belief as to the truth of the facts set forth in paragraph 6 of the opposition

8. Applicant denies knowledge or information sufficient to form a belief as to the truth of the claim set forth in paragraph 7 of the opposition.

9. Applicant denies knowledge or information sufficient to form a belief as to the truth of the facts set forth in paragraph 8 of the opposition

10. Applicant denies the allegation in paragraph 9 of the opposition.

11. Applicant denies the allegation in paragraph 10 of the opposition.

12. Applicant denies the allegation in paragraph 11 of the opposition.

13. Applicant denies the allegation in paragraph 12 of the opposition.

As for Affirmative Defenses, Applicant states as follows:

#### **AFFIRMATIVE DEFENSES**

1. Opposer is barred by the doctrine of laches from opposing Applicant's mark.

2. Opposer is barred by the doctrine of Estoppel from opposing Applicant's mark.

3. Opposer is barred by the doctrine of Acquiescence from opposing Applicant's mark.

4. Opposer's file wrapper history estops Opposer from asserting the claims set forth in the opposition.

5. Applicant contends that the proposed mark is not so similar in sight, sound and meaning as to cause consumer confusion in contravention of the Lanham Act.

6. The market is crowded with "GARAGE BAND" marks.

7. Opposer's mark "GARAGEBAND" is weak, and there are various pending applications and uses of marks containing the words "garage band," including a registration by Apple, Inc. for "GARAGE BAND" for software, and a registration by The Garage Band Network for "THE GARAGE BAND NETWORK."

8. Opposer has instituted this action in bad faith. There are many other similar marks on the market, even more similar than that of Applicant's, which Opposer, to Applicant's knowledge, has not pursued.

9. The Opposer is barred by its own unclean hands.

10. The Opposer's registration is invalid or void *ab initio* due to a fraudulent Statement of Use or other invalidity or cancellation.

11. Opposer will not in fact be damaged by registration of Applicant's mark

12. The Opposer has acted fraudulently to the Trademark Office by filing applications for its GARAGEBAND mark based on a bona fide intent when in fact it

does not have a bona fide intent to use its mark for all goods and services identified in the Registration or in the Opposer's other pending applications.

13. Opposer's Opposition fails to state a claim upon which the relief sought may be granted.

14. Opposer is barred by the doctrine of waiver from opposing Applicant's mark.

WHEREFORE, Applicant respectfully requests that the Notice of Opposition be rejected and that Applicant's mark be allowed to proceed to registration.

Dated: March 13, 2009

Respectfully submitted,

By: /Dana B. Robinson/  
Dana B. Robinson, Attorney

**CERTIFICATE OF MAILING**

I hereby certify that service of the foregoing Answer to Notice of Opposition with Affirmative Defenses was mailed this 13<sup>th</sup> day of March, 2009, by depositing a true and correct copy of the same from mailing at San Diego, California, postage fully prepaid thereon, addressed to the following:

Rochelle D. Albert  
Sharon R. Smith  
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/Dana B. Robinson/  
Dana B. Robinson